

THIRD AMENDMENT
TO
CATERING AND CONCESSION SERVICE AGREEMENT
AUSTIN CONVENTION CENTER DEPARTMENT

This Third Amendment to the Catering and Concession Service Agreement, as amended, is made between the CITY OF AUSTIN, a Texas home-rule corporation ("City"), acting by and through the Director of the Austin Convention Center Department ("Department"), and ARAMARK SPORTS AND ENTERTAINMENT SERVICES OF TEXAS, INC., a Texas corporation ("Aramark").

Whereas, the City and Fine Host Corporation ("Fine Host") entered into a Catering and Concession Service Agreement dated November 24, 1997 ("Agreement") whereby the City granted Fine Host certain rights to sell food, beverage, gifts, and novelties, operate food and beverage concession stands, and to cater events at the City's convention center and other facilities operated by the Department for a term of ten years;

Whereas, the Agreement was amended by an agreement between the City and Fine Host on August 23, 2001 ("First Amendment") to 1) extend the term of the Agreement; 2) modify the compensation payable to the Caterer; 3) require Fine Host to invest \$1,500,000 for the purchase of kitchen equipment for the Convention Center; and 4) include other equipment related provisions.

Whereas, the City consented to the assignment of the Agreement, as amended, by Fine Host to ARAMARK FHC, LLC and ARMARK FHC, LLC 's assignment to its affiliate, Aramark and Aramark agreed to amend the Agreement to provide certain financial and other incentives to the City pursuant to an agreement by the parties dated October 1, 2003 ("Second Amendment").

Whereas, the current Agreement, as amended, requires Aramark to transfer an amount not to exceed five percent of each monthly gross revenues to the City for deposit to fund the replacement, maintenance, repair of catering/concession equipment and furnishings, and promotion of concessions and catering products/services for the Center; and

Whereas, the parties wish to amend this Agreement to implement new procedures and authorization requirements for Caterer and Director requests for the disbursement of the deposited funds for catering/concession equipment, furnishings, and promotional costs and include a performance evaluation for the Caterer Maximum Productivity Reward.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the City and Aramark agree as follows:

AGREEMENT

1. The Agreement, as amended, is further amended as follows:

1.1 Section 1.5 In the first and last sentences of Section 1.5, delete “Palmer Auditorium and City Coliseum” and insert “Palmer Events Center.” In the last sentence of Section 1.5, delete the word “are” and insert “is”.

1.2. Section 1.15.4 is deleted in its entirety and the following provision is inserted:

“the amount paid into the Center Repair and Replacement Fund and the Center Marketing and Promotion Fund as described in Subsections 7.1 and 7.2.”

1.3 Section 1.28 Productivity Reward is revised as follows:

Productivity Reward means the total compensation that may be payable to Caterer in an amount equal to ten percent (10%) of the excess Incentive Gross Revenues over Base Gross Revenues in any one Accounting Year. The specific Productivity Reward amount payable, if any, to the Caterer will be determined in accordance with the performance evaluation of the Caterer services as described in Section 5.1.

The total Productivity Reward in any one Accounting Year may not exceed the Maximum Productivity Reward. A Productivity Reward may only be paid upon the receipt by the Contract Administrator of a complete accounting statement showing that the Incentive Gross Revenues for the current Accounting Year have exceeded the Base Gross Revenues for the same Accounting Year (see example of this calculation method in Exhibit F) and the Caterer has qualified for a partial or full Productivity Reward disbursement as set for in Section 5.1. The amount of the Productivity Reward disbursement to the Caterer shall be calculated in accordance with the procedure stated in Section 5.1.

1.4 Section 1.30. In the first sentence, delete the words “Replacement, Maintenance, Repair, and Promotion Fund” insert the following: “Center Repair and Replacement Fund, and Center Marketing and Promotion Fund means the two separate funds established in the City Budget for the Department for the expenditures described in Subsections 7.1 and 7.2.” Delete the sentence “This fund shall be an Expense, as described in Section 1.15.” and insert “Each of these funds shall be an Expense as described in Section 1.15.”

1.5 Section 5.1 (as amended by the First Amendment). In the first sentence, delete “together with any Productivity Reward”. As amended, this sentence reads: “Compensation. The Caterer shall be entitled, as sole compensation for services under this Agreement, to the Periodic Fixed Fee.” After the first sentence, insert the following: At the end of the Accounting Year, if the Caterer meets the

following survey performance standards, the Caterer may be entitled to receive a partial or full Productivity Reward disbursement. Caterer eligibility for a Productivity Reward disbursement is based on customer survey responses about Center services delivered for the Accounting Year. The Director and Caterer must agree on the particular survey questions and format. Caterer agrees to engage a qualified third party to conduct a quarterly survey of Center customers. The survey will rate Caterer's customer services in these categories: planning process, food and beverage, and management level staff areas. The Caterer's annual survey target for each category is 60% favorable responses (Planning Process), 49% favorable responses (Food and Beverage), and 58% favorable responses (Management Level Staff) for a total annual survey target of 167% favorable responses. At the end of the Accounting Year, the Caterer's scores in each category will be added to determine the final category evaluation score. The Caterer may qualify for a certain Productivity Reward payment based on the following final category evaluation scores: 167% or above = 100% Productivity Reward, 158-166% = 90% Productivity Reward, 147-157% = 80% Productivity Reward, and 138-146% = 70% Productivity Reward. If the Caterer's final category evaluation score is 137% or lower, the Caterer will not receive any Productivity Reward disbursement. No Productivity Reward disbursement shall be paid unless survey results and calculations are provided to the City within thirty (30) days of the end of the Accounting Year. The Caterer and the Director shall annually reevaluate the above stated final category evaluation score targets.

- 1.6 Section 5.3 Payment of Catering and Concession Fee (as amended by the First Amendment). Revise the second sentence so it reads: "At the end of any Accounting Year that annual accumulated Incentive Gross Revenues exceed annual accumulated Base Gross Revenues for the Accounting Year to date, the Caterer may be eligible to qualify for a Productivity Reward disbursement as described in Section 5.1.
- 1.7 Subsection 5.4 (b). Delete this provision and insert: "(b) the amount due the City under Sections 7.1 and 7.2 for the Center Repair and Replacement Fund and the Center Marketing and Promotion Fund."
- 1.8 Section 6.2. In Subsection (a), delete "Replacement, Maintenance, Repair, and Promotion Fund" and insert "Center Repair and Replacement Fund, and Center Marketing and Promotion Fund." Insert "Subsection (c) a statement listing the Caterer expenditures for purchases from the Center Repair and Replacement Fund.
- 1.9 Article VI is amended by inserting Section 6.7 as follows:

Section 6.7. Quarterly Marketing and Promotional Plan Report. The Caterer and Director shall prepare a Quarterly Marketing and Promotional Plan Report for the City Manager or designee review and approval. The Caterer must

submit the initial Plan Report to the City Manager or designee no later than thirty days after the first quarter in the Accounting Year. Thereafter, the Caterer must submit the Plan Report no later than ten days after each quarter in the Accounting Year. The Plan Report must itemize proposed expenditures from the Center Promotion Fund.

2.0 Article VII Equipment is revised to state “Article VII Equipment and Promotion.”

2.1 Section 7.1 is deleted in its entirety and the following numbered provisions are inserted:

7.1 Replacement, Maintenance, and Repair of Catering and Concession Equipment and Furnishings. The Caterer shall transfer to the City for deposit into the City Budget’s Center Repair and Replacement Fund for the Department a percentage, not to exceed three percent (3%) of each Accounting Month’s Gross Revenues as referenced in Section 5.4. The actual percentage amount of the transfer shall be established each year in the Annual Sales and Marketing Plan. Assets in this fund shall be used solely for acquisition, replacement, repair, and maintenance of Catering and Concession equipment and furnishings. Typical expenditures from this fund include but are not limited to cooking equipment, glassware, silverware, china, shelving racks, and drink dispensers.

The Caterer must notify the Director in writing before each proposed expenditure and include the basis for the particular acquisition, replacement, maintenance, or repair. Unless the Director objects to the proposed expenditure within five (5) days of the Caterer’s notification, the Caterer may proceed with the purchase. Within sixty (60) days of the purchase, the Caterer must submit a reimbursement request with documentation required by the City for the fund expenditure to the Director. Any Caterer reimbursement request that is not submitted to the Director within sixty (60) days of the Caterer’s purchase shall be considered ineligible for reimbursement. Furthermore, any Caterer reimbursement request that is misdirected or lost by the U.S. Post Service or other delivery service is not the responsibility of the City. City reserves the right to deny the Caterer’s reimbursement request if City determines the Caterer has not complied with the terms of this Agreement including the requirements of this section. If the City denies the Caterer’s reimbursement request, the fund expenditure stated in the Caterer’s request is non-recourse to the City. The City shall not be liable for any fund expenditure specified in a denied Caterer’s reimbursement request.

All Caterer purchases for expenditures from this fund shall be subject to applicable state law and City requirements for the procurement of goods

and services. The Caterer must comply with all purchasing laws. At the end of each Accounting Year, any unexpended funds in this Fund shall remain in the Fund for the next Accounting Year and remain the property of the City.

- 7.2 Promotion of Concessions and Catering Products and Services. The Caterer shall transfer to the City for deposit into the City's Budget's Marketing and Promotion Fund for the Department) a percentage, not to exceed two percent (2%) of each Accounting Month's Gross Revenues as referenced in Section 5.4. The annual percentage amount of the transfer shall be established each year in the Annual Sales and Marketing Plan. The Department shall use assets in this fund exclusively for costs associated with the promotion and marketing of 1) Center facilities and 2) catering and concession services at Center scheduled events. Expenditures from this fund must involve the recruitment and marketing of potential Center customers. Typical expenditures from this fund are Center participation in events, exhibits, and conferences to display and present Center services and facilities; meals included in a Center contract; food at events designed to solicit Center business; promotional items such as gift baskets; and meetings at the Center with event planners.

All expenditures from this fund must have the prior written approval of the Director and the City Manager or designee. A written request for an expenditure under this section must be submitted to the Director or designee before the event is scheduled. The request must include justification for the promotional expenditure. The proposed expenditure must be included in the Quarterly Marketing and Promotional Plan Report as described in Section 6.7. If the Director approves the request, he shall note his approval and provide the City Manager or designee with a copy of the request for final review and approval. No expenditures shall be authorized from this Fund without the Director and City Manager or designee's prior written authorization.

All purchases from this fund shall be subject to applicable state law and City requirements regarding the procurement of goods and services. At the end of the Accounting Year, any unexpended funds in this Fund shall remain in the Fund for the next Accounting Year and remain the property of the City.

- 2.2 Sections 7.2 Leasehold Improvements and 7.3 Annual Inventory of Equipment are renumbered Section 7.3 and Section 7.4, respectively.

- 2.3 Section 7.4 Annual Inventory of Equipment. Insert the following sentence at the end of this section: "The City shall own all title, right, and interest in the

equipment purchased by the Caterer under Section 7.1, provided the City has reimbursed the Caterer for the equipment.”

2.4 Insert Section 7.5 “City Fund Transfer” and the following provision: “The City will transfer sixty percent (60%) of the ending balance of the Replacement, Maintenance, Repair, and Promotion Fund to the Center Repair and Replacement Fund and transfer the remaining forty percent (40%) to the Center Marketing and Promotion Fund.”

2.5 Section 8.6.4. In the first sentence, delete “both Palmer Auditorium and City Coliseum” and insert “the Palmer Events Center”.

2.6 Section 14.4 In the address section for the City Law Department, delete “114 West 15th Street, Fifth Floor” and insert “301 W.2nd Street, Fourth Floor”.

2.7 Insert Article XVII “City Management Events and City Sponsored Events” Section 17.1 as follows: “During the Accounting Year, Caterer Catering and Concession services are available to the City in the Center at Caterer’s cost for up to twelve City management events and up to six City sponsored events at forty percent of the retail cost. City management events and sponsored events require prior written approval of the Director and City Manager.”

2. Except as expressly amended by this Third Amendment, the Agreement, as previously amended, shall remain unchanged and in force and effect in accordance with its terms. No other or further amendments or modifications to this Agreement shall be effective unless in writing and signed by both parties.

3. This Third Amendment shall be effective on October 1, 2007.

IN WITNESS WHEREOF, the parties have executed this Third Amendment in duplicate originals in Austin, Travis County, by their duly authorized representatives.

CITY OF AUSTIN

**ARAMARK SPORTS AND
ENTERTAINMENT SERVICES OF
TEXAS, INC.**

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title: _____

Date:_____

Date:_____